

# **Chapter Six**

## **Renting Residential Property**

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## **Introduction**

RENTING AN APARTMENT can be a headache, whether you are the prospective tenant or the landlord, and disputes between landlords and tenants are never pleasant. This chapter offers some help over the rough spots.

Keep in mind that state and local laws on this subject vary widely and are frequently different from the established principles of common law. For specific answers you may need to get help from your local government, tenants association or building managers association. The examples in this chapter concern rental arrangements between private parties; the rules may be different if you are renting from a government agency, such as a city or county housing authority.

## **Choosing a Landlord/Tenant**

The first decision in a rental relationship requires that both the landlord and the tenant choose each other. The wisdom of this decision will probably affect each party's satisfaction until the tenant moves out or the landlord turns over the property to someone else, and that could mean years. A "problem" tenant or a "problem" landlord usually does not improve over time. Both the landlord and the tenant should do all they can to make sure of a good match.

If you are a landlord, do not be so anxious to rent a place that you will accept a poor tenant. If you are a prospective tenant, do not accept a poor dwelling or lease just because the place is available today. Check each other out.

### **Q. How can tenants choose a good landlord?**

**A.** If you look at a house or apartment to rent, you will naturally check out the space and the amenities: the number of bedrooms and bathrooms, the presence of kitchen appliances and air conditioning, and so forth. You should check out the landlord as well.

The single most important question is whether the landlord will make repairs if something breaks. If possible, get the answer to this question before you move in. You can also check out the landlord with the local building management association, apartment association, or Board of Realtors, the local office of the Institute of Real Estate Management, and whatever agency handles tenant complaints in your locality.

### **Sidebar: The mailbox test**

In choosing an apartment you will want to check the overall condition of the grounds and the building, the common areas, parking areas, the interior painting, cleanliness, and maintenance. Look at it at night as well as in daylight. Talk to present tenants.

One quick way to judge the quality of a building is to look at the mailboxes and doorbells at the front door.

Are the tenants' names all uniform, such as generated by a plastic label gun? If so, they were probably put there by an above average landlord who cares about the appearance of the building.

Are the name labels all different, as if the tenants put them there themselves? That is a sign of a landlord who is indifferent to the appearance of the building. Are the names written on the mailboxes with a felt marker or scratched into the metal? Are the mailboxes

broken or lacking locks? That looks as though the landlord and tenants don't care at all about appearances. You should look elsewhere.

**Q. Suppose the landlord says he'll fix anything that's broken. Why should I believe him?**

**A.** If you inspect the apartment and see some things that are broken or need to be repaired, ask the landlord when repairs will be made.

If the landlord is willing to write down a list of repairs to be made and sign it, that is an indication of good faith. This is an above average landlord.

If the landlord makes only an oral promise to repair things, you cannot be sure of the real intention. Some things may be repaired and some may not.

If the landlord won't even give an oral promise, it's a clear sign that repairs won't be made. This landlord is below average. Look someplace else.

But remember the difference between repairs and improvements. A tenant is entitled to have things in good working order. A tenant may not be entitled to a new refrigerator.

**Sidebar: LET'S LOOK AT THE RECORD**

It may be difficult and time-consuming, but one way to check the quality of a landlord is to visit the courthouse and check the public records.

Has the municipality sued the landlord for failure to maintain the property up to the requirements of local codes? If there is no record of such a suit, it's probably a sign of a good landlord (though it could also indicate an inattentive municipality). If the landlord has been sued, you should be suspicious. If a suit is pending now, run away.

If the municipality has a local code inspection agency, its files may be matters of public record. Check them if you can. A code violation in the past does not necessarily indicate a bad landlord. Not all code violations are equally serious, and many buildings will have some violations. Municipalities will issue complaints or file suits against the landlord only in cases of serious code violations and only if repairs are not made promptly.

**Q. How can landlords go about choosing tenants?**

**A.** If you are offering a place to rent, have the prospective tenants complete a rental application. Standard application forms are usually available at stationery stores.

The two most important elements of the application are the employment history and the rental history. Get information for the past three or five years. Then contact each of the applicant's employers and landlords for that period. If the applicant has worked at the same job and lived in the same apartment for that time, you have as good an indication as possible of a quality tenant.

A prospective tenant who undergoes such a check might well be thankful. The landlord will have checked the building's other tenants as well, and so the neighbors will probably be reliable people.

**Q. How else can landlords evaluate prospective tenants?**

**A.** Many areas have companies that specialize in tenant records. They can tell you if someone has been evicted in the past or failed to pay the rent.

General credit bureaus can supply a history of credit payments to landlords if the prospective tenant authorizes a search of the records. This credit information will include the timeliness with which car and credit card payments have been made, bankruptcies, judgments against the tenant, and adverse information from other creditors.

**Q. Are there any legal pitfalls in choosing a tenant?**

**A.** Landlords need to take special care to treat all prospective tenants in the same way. The law prohibits many kinds of distinctions that landlords used to make in selecting tenants. Fair housing laws forbid discrimination on the basis of race, of course, but go far beyond that. [See the section on fair housing later in this chapter.](#)

**LEASES**

When the landlord has decided to rent to the tenant and the tenant has chosen to rent from the landlord, they will enter into a lease or rental agreement.

**Q. What is a lease or agreement?**

**A.** They are contracts, either written or oral, in which the landlord grants to the tenant exclusive possession of a premises in exchange for rent for a period of time.

**Q. Do all tenants have the same kind of lease?**

**A.** No. Most tenants fall into one of two categories.

If the tenant rents for a fixed period of time (that is, a term) and no notice is required to terminate, the tenancy is called a tenancy for years. This tenancy is usually in writing. It must be in writing if the term of the lease is longer than one year.

If the tenancy continues indefinitely, automatically renewing from one period to the next, and if a notice is required to terminate, the tenancy is called periodic. This lease or agreement may be written or oral.

**Q. What are the advantages of an oral versus a written lease?**

**A.** For tenants with an oral month-to-month agreement, the major advantage is the ability to terminate the lease and move out without further rental liability with only a short notice to the landlord. The notice usually must be the same as the term of the agreement, commonly 30 days. Tenants are very mobile (20 percent move each year) and the ease of moving can be an important consideration.

For landlords, an oral lease provides an easy way to terminate the lease and make the tenant move out with only a short notice, or to raise the rent. The landlord is usually not required to state a good reason for the termination, as must be done in other cases. (See the sections on termination of leases and security of tenure later in this chapter.)

**Q. What are the disadvantages of an oral lease?**

**A.** Because nothing is written down, the major disadvantage is the possibility of misunderstandings between the landlord and the tenant about the conditions of the tenancy.

**Q. What are the advantages of a written lease?**

**A.** The chief advantage of a written lease is the landlord's right to hold the tenant to pay rent for the entire duration or term of the lease.

The tenant may also have an advantage, in that the landlord cannot raise the rent beyond the amount specified in the lease during the term of that lease. There is no evidence, however, that landlords with oral leases increase rent more often than landlords with written leases. Furthermore, since most standard lease forms are written by attorneys who work for landlords or the real estate industry, the slant of the lease is usually in favor of the landlords.

**Q. What are the disadvantages of a written lease?**

**A.** The major disadvantage for the tenant is that the landlord may write in express provisions that void certain protections that the law ordinarily gives to the tenant. Also, in most written leases the landlord's responsibilities are not very well spelled out.

**Q. What are the most important lease clauses from the point of view of landlords?**

**A.** The most important clause to landlords is the duty of the tenant to pay the rent in full and on time. This includes the right to charge a fee for damages if payment is late. Other important clauses grant the landlord the right to enforce the rules and regulations written into the lease.

**Q. What are the most important lease clauses for tenants?**

**A.** The lease states the duty of the landlord to maintain the physical condition of the premises. Other clauses should state the right of the tenant to terminate the lease if the landlord fails to make needed repairs. Where the law allows it, the tenant should have a clause specifying the right to hire workers to correct defects in the premises and to charge the landlord for the cost or deduct it from the rent. A clause giving the tenant the right to pay reduced rent is important if the landlord fails to make repairs.

**Sidebar:**

**CHANGING THE RULES**

Leases are not written in stone, even though standard forms may seem that way.

Most standard leases are written by lawyers who favor landlords. Tenants should try to remove clauses they do not like. They should try to add conditions that they want, such as the right to own pets or to have the landlord paint the apartment.

Likewise, of the scores of standard forms available, none is likely to meet the needs of every landlord. Some fail to spell out which utility services the tenant pays for and which ones the landlord pays. Others fail to allow the landlord the right ever to enter the premises without the consent of the tenants.

Landlords have as much right as the tenants to alter the lease terms to cover such things.

**Q. How should the tenant or the landlord change the lease if either doesn't like certain clauses?**

**A.** If either one can persuade the other to remove a particular provision, that provision should be marked out in ink on all copies. Both the landlord and the tenant should then initial the marked-out sections.

Many preprinted forms contain large blank spaces for the landlord and tenant to write additional agreements, which become part of the lease. These inserted paragraphs should be initialed by both landlord and tenant. If the spaces are absent or are too small, the additional terms should be written on a separate sheet of paper and signed by both the landlord and tenant.

**Q. Does the law regulate the provisions in a lease?**

**A.** Yes. Both courts and legislative bodies have made laws restricting the provisions in a lease.

For example, state courts have struck down lease clauses which provide that the tenant accepts the apartment in "as is" condition and that the tenant must pay the rent regardless of whether the landlord maintains the property. So, if a landlord sues to evict for nonpayment of rent, tenants can defend themselves by arguing that the premises were not worth the full contract rent because of the deteriorated condition. This legal concept is called the implied warranty of habitability, which is discussed later. It prevents the landlord from evading the responsibility to maintain the premises even if the tenant signed a lease waiving the right to maintenance.

Many states and municipalities have enacted laws that prohibit some clauses from residential leases. An example of a commonly prohibited clause is "confession of judgment." Such a clause would permit the landlord's attorney to go into any court and to represent the tenant without any prior notice, service or process. The tenant would waive a jury trial, confess judgment to whatever the landlord sues for without any defense, waive all errors or omissions made by the landlord in making the complaint, and authorize an immediate eviction or wage deduction.

**Lease Clauses to Consider**

**Q. Can the tenants own pets?**

**A.** With an oral agreement or lease, tenants would probably have the right to own a pet. Without a clause in a written lease prohibiting pets, it would be hard for a landlord to prove that tenants were told that pets were forbidden.

Written leases usually have a clause prohibiting pets on the premises or requiring tenants to get written permission for them from the landlord. A tenant who violated this clause could be evicted if the pet remained after the landlord asked for its removal.

**Q. Is the lease canceled because the landlord sells the building or the tenant dies?**

**A.** Most preprinted standard lease forms contain a paragraph on heirs and successors. This paragraph provides that the lease does not expire upon the sale of the building or the death of the tenant. If the tenant dies during the term of the lease, the tenant's estate will continue to owe the rent until legally released; it will also have the right to occupy the premises.

**Sidebar: PLEASE DON'T COME IN**

Normally a landlord has no right to enter a tenant's apartment unless the tenant gives consent. Under the general concept of landlord-tenant law, the landlord has surrendered possession of the premises entirely to the tenant for the term of the lease.

But a written lease will almost always give the landlord the right to enter to show the premises to prospective buyers or prospective tenants and to make necessary or agreed repairs. A lease may require the landlord to give a 24-hour notice, but some leases do not require any prior notice or restrict the time or frequency of entry.

State and local laws may also give landlords the right of access. Usually these ordinances require landlords to give reasonable advance notice and to enter only at reasonable times and not so often as to be harassing.

**Q. Does the tenant owe the landlord a late fee if the rent is not paid on the date specified in the lease?**

A. Not unless a late fee is specified in the written lease. Some municipal ordinances restrict the amount of late fees that a landlord may charge. State courts have also ruled that such a fee may be charged for damages but cannot be so large as to constitute punishment. Only the government has the right to punish or penalize someone for misconduct.

**Q. Can tenants be forced to waive their rights by signing a lease?**

A. Maybe. It depends upon whether the local or state law prohibits landlords from requiring such waivers. For example, the landlord's duty to maintain the property cannot usually be waived by the tenant. However, the landlord's duty to notify the tenant before suing for eviction can be waived in most places.

**Q. Is the landlord liable for the damages incurred by a tenant who was injured because of inadequate maintenance of the property?**

A. Many leases contain clauses, called exculpatory clauses, in which the tenant automatically excuses the landlord from any liability for damages from any cause whatsoever. Only about half of the states prohibit such clauses in residential leases.

If the lease does not contain an exculpatory clause or if the state makes such a clause illegal, it will be up to a court to decide whether the injury resulted from some negligent act by the landlord.

Some courts have held that if the tenant's injury resulted from the landlord's violation of the housing code, the landlord is plainly negligent and liable. Other courts have required the tenant to prove negligence. That is, there must be evidence that the landlord knew or should have known of the defective condition before the tenant's injury. Furthermore, the landlord must have failed to make repairs within a reasonable time or in a careful manner.

**Q. If the landlord loses the building to the bank by foreclosure for failure to pay the mortgage, is the tenant's lease still valid?**

A. No. Most leases provide that the lease is subordinate to any mortgage. This means that if the landlord fails to make payments to the mortgage holder, the landlord can lose the property through a lawsuit, called a foreclosure. Since the lease is subordinate to the mortgage, the bank can disregard it and evict the tenant.

**Q. If the property burns down, does the tenant still owe rent under the lease?**

**A.** In most cases, no. But a few state laws still on the books call for continued payment.

**Q. If the government condemns the property and decides to tear it down, is the tenant's lease still valid?**

**A.** No. Most leases state that the landlord or the government may terminate the tenant's lease if the government condemns the property. The right of the government to condemn private property is called eminent domain. The government must compensate landlords for taking their property. The lease may provide that the tenants are not entitled to any of this money, but in some areas the law may entitle them to a portion of the settlement.

**Q. Can the tenant, with the landlord's consent, operate a business out of the rented premises?**

**A.** How residential property may be used legally is governed by local zoning ordinances. In residential areas, some ordinances permit white-collar work, such as accounting, word processing, tutoring, and counseling, but forbid any commercial, retail, industrial, or manufacturing use. Likewise, local zoning may prohibit people from living in a commercial, retail, industrial, or manufacturing building. Therefore, if the landlord rents manufacturing space to a residential tenant in violation of the zoning ordinance, the lease is unenforceable because it is for an illegal purpose.

Most leases provide that the tenant must use the premises solely for residential purposes. Thus, business uses would be illegal even if the zoning law allowed them.

**Sidebar: WHOSE CHANDELIER IS IT**

Disputes often arise when tenants install more or less permanent fixtures, such as chandeliers or ceiling fans, in their apartments. Can they remove them when they move out?

Under the general concept of landlord-tenant law, tenants may do anything they wish as long as they do not damage the property. But most leases do not allow a tenant to install such fixtures without the landlord's approval. Sometimes the lease provides as well that such fixtures become the landlord's property when the lease expires. Some leases permit removal of the fixtures if the wall or ceiling is restored to its original condition.

**Q. If the landlord provides laundry facilities in the building at the time that the tenant signs the lease but later discontinues this service, does this violate the lease?**

**A.** Maybe. Most leases provide that the tenant's use of any facility in the building outside of the apartment is a license and not a lease. These facilities include laundry in the building, storage areas, garages and parking spaces, bike rooms, swimming pools, workout rooms, and party and recreational areas. A license conveys permission to exercise a privilege in the use of the property and can be revoked by the landlord.

But state statutes or municipal ordinances may define the term "premises," which are rented to the tenant, to include the common areas of the property. In that case, the



landlord cannot discontinue such services. If the landlord discontinues services that are included in the rent, the tenant probably would be entitled to a reduction in rent.

**Q. What can the tenant do if other tenants in the building make noise and interfere with the tenant's "right of quiet enjoyment" of the premises?**

**A.** Traditionally, other tenants cannot interfere with the "right of quiet enjoyment." But that legal phrase does not refer to noise; it refers to the tenant's legal right to occupy the apartment. The landlord would violate the right by renting the same apartment to two different tenants or by removing the tenant's belongings.

As for noise, some courts have held recently that the landlord has the duty to keep tenants from annoying others where the lease contains a clause requiring tenants not to disturb their neighbors. Because they control who may rent in the building, it is appropriate to require landlords to enforce their own rules.

**Sidebar: CONDOS ARE SPECIAL**

A tenant who rents a condominium has two obligations, one to the condo unit's owner and one to the condo association.

The condo owner is the landlord. But the association sets the rules and regulations for the building and controls the common areas. Depending on local law, the association may have the right to seek eviction of a condo tenant who violates the rules. It may also have the right to seek the tenant's eviction if the condo owner fails to pay the regular association assessments.

All states and many municipalities have passed special condo laws, although in some cases they do not apply to buildings with only a few units. If you rent a condo, check the local law.

**Q. In a legal dispute between the landlord and the tenant, does the tenant have to pay the landlord's attorney's fees?**

**A.** Most leases make the tenant responsible for the payment of all attorney's fees incurred by the landlord in the enforcement of the provisions of the lease. But some state or local laws restrict that provision to situations where the landlord wins a lawsuit and the court awards fees; if the tenant wins, the landlord pays the fees.

**MAINTENANCE OF RENTAL PROPERTY**

A major source of conflict between landlords and tenants concerns the maintenance and repair of the rental property. Regardless of how high or low the rent is, there is an inherent tension between the desire of landlords to make money and the desire of tenants to have money spent on the property.

**Q. Does the landlord have the obligation to maintain the premises and to make repairs if defects occur?**

**A.** Yes. The lease makes the landlord responsible, and so do many court rulings and state and local laws.

**Q. Does the tenant have any obligation to the landlord regarding the maintenance of the premises?**

**A.** Traditionally, the tenant has the duty not to "commit waste." That means the tenant may not cause unreasonable and permanent damage to the property.

The common law, leases and landlord-tenant laws have modified this concept. The tenant must comply with the sections of housing codes concerning keeping the premises clean and disposing of trash in a reasonable manner and in the facilities that the landlord supplies. The tenant must obey the rules of the lease and may not damage the property negligently or deliberately. When moving out, the tenant must return the property to the landlord in clean and repaired condition, except for reasonable wear and tear. ([See the section on security deposits later in this chapter.](#))

**Q. What is the express warranty of habitability?**

**A.** The lease may explicitly say that the landlord shall maintain the premises and make repairs. Such promises are called express warranties of habitability.

When the lease is signed, the tenant should make sure it lists all repairs that are needed now and contains a clause by which the landlord agrees to make future repairs when needed. Then, if the landlord fails to maintain the premises up to the express standard written into the lease, that would constitute a breach of contract and the tenant could sue or seek other remedies.

**Q. What is the implied warranty of habitability?**

**A.** The traditional concept of landlord-tenant law was that unless the lease explicitly provided for the landlord to maintain the property and make repairs, the tenant accepted the premises "as is." The landlord had no duty to make the property fit for habitation before the tenant moved in or to repair the premises if they became defective while tenant was living there.

Beginning in the late 1960s, courts ruled that the lease of every residential tenant contained an implied (that is, unwritten but understood) warranty that the property was in good condition and the landlord would keep it that way. Lease clauses in which the tenant waived the right to maintenance were declared illegal and unenforceable. Almost all of the state courts have made such rulings. By passing laws requiring the landlord to maintain the property, state legislatures and municipalities have also created an implied warranty in leases.

Habitability is sometimes defined as the minimum standard for decent, safe, sanitary housing specified in the state or local housing code.

This implied warranty of habitability gives tenants the right to withhold rent if the landlord fails to comply with the state or local housing code. Tenants can also sue landlords and can defend themselves against eviction for nonpayment of rent by arguing that the landlord violated the implied warranty of habitability.

The court rulings generally do not require the landlord to correct all violations of the housing code but only to achieve substantial compliance.

**Q. What are housing codes?**

**A.** A housing code is an ordinance enacted by the state or municipality requiring property owners, including landlords, to maintain their property and to make repairs.

To qualify for funding from the federal urban renewal program, about five thousand municipalities passed these codes between 1954 and 1965. They also hired inspectors to enforce the codes.

A standard provision in the codes prohibits a landlord from renting a property that does not meet the minimum code standards.

**Q. Do the implied warranty of habitability and housing codes apply only to tenants living in slum buildings?**

A. They apply to everyone. It is true that the original lawsuits that led to the adoption of the implied warranty of habitability were brought on behalf of poor tenants living in slum conditions. However, the courts make no legal distinction between the rights of tenants based on income. The standard of maintenance required applies to all buildings, all landlords, and all tenants.

It cannot be stressed too much that tenants at all income levels have problems with landlords providing adequate maintenance. It is not uncommon for very expensive apartments to have dozens of severe code violations, such as corroded plumbing, defective or missing locks, and faulty furnaces.

**Q. What kind of standards do housing codes require landlords to maintain?**

A. Tenants should know what the local housing code requires because they have the right to demand these conditions of the landlord. Landlords should know the requirements because the municipality expects them to maintain these conditions in the property. The following conditions are typical of the broad areas covered in detail in local housing codes:

- the building outside the apartment, such as garbage and refuse removal, and safe and structurally sound stairs, porches, railings and handrails, windows and doors, screens, storm windows, walls and siding, roofs, chimneys, foundations, basements, signs, awnings, and other decorative features;
- the interior of the apartment, such as walls, floors, and ceilings without holes, cracks or other defects, no lead-based paint, waterproof bathroom and kitchen floors, no rodent or insect infestation;
- light, ventilation and space, such as minimum lighting for halls and stairways, window or mechanical ventilation, minimum adequate space for occupants;
- plumbing facilities and fixtures, such as running water, adequate hot water, sufficient water flow, no leaks, working fixtures;
- mechanical systems, such as hot water tanks, furnaces, air conditioning, cooking equipment, fireplaces;
- electrical systems, such as elevators, sufficient circuits and capacity, working fixtures, switches and receptacles;
- fire safety, such as smoke detectors, fire extinguishers, automatic sprinkler systems, adequate exits, control over storage of flammable materials;
- security, such as locks on the windows and doors, peepholes in the doors, shatterproof glass on windows.

**Q. Can the tenant do anything if the landlord refuses to make repairs?**

**A.** Yes. The tenant has a number of options, though not all are available in all states. The tenant might complain to the municipal code enforcement agency, take the landlord to court, repair the defect and deduct the cost from the rent, reduce the rent payment, or terminate the lease

### **Municipal Code Enforcement**

#### **Q. Can the municipal government force the landlord to maintain the property and make repairs?**

**A.** If the municipality has adopted a housing code, it will probably have also adopted a mechanism for enforcing that code against violators. The tenant can report the landlord to the municipal department responsible for enforcing the code. The municipality hires employees to inspect properties for code violations.

#### **Q. How does municipal code enforcement work?**

**A.** Municipalities make two basic types of inspections: upon complaint from residents and upon a preset plan.

Some landlords have contested the right of municipal inspectors to enter their property; they call it trespassing. The municipality may have to go to court to get a search warrant if the landlord refuses to let an inspector enter. The municipality does not need a warrant, however, if tenants invite the inspector onto the property.

Some courts have restricted the right of the municipality to enter apartments in a building as part of a preset plan. A municipality's plan is simply a schedule of inspections. It may call for inspection of the common areas of every rental building every year, or inspections of all buildings with more than three stories every two years, or every building in a certain neighborhood every three years, or any variation of that timetable.

If a local inspector finds any violations of the housing code, a citation can be issued against the landlord. Besides stating the violations, the citation may give the landlord a specified number of days to comply with the law.

If the landlord does not make the required repairs, the next stage of enforcement will probably be an administrative hearing. If the landlord fails to correct the code violations after a hearing, the municipality can take the landlord to court.

State laws authorize the courts to order the landlord to make repairs, to fine the landlord, to place the building in receivership until the violations are corrected, or even to condemn the building and order it demolished

#### **Q. Is municipal code enforcement effective?**

**A.** Where local government and courts are committed to code enforcement, this is probably the single most effective way to maintain the quality of housing in the community. But many municipalities are not making the persistent effort that is needed.

### **Suing the Landlord**

**Q. Can the tenant take the landlord to court for failure to maintain the premises and make repairs?**

**A.** Yes. There are three legal theories that apply.

- The concept of the implied warranty of habitability, which was established by tenants attempting in court to force landlords to comply with local housing codes.
- Many local landlord-tenant ordinances permit the tenant to seek a court order if the landlord fails to maintain the premises. These ordinances may also require the landlord to pay the tenant's attorney's fees.
- A number of state statutes on consumer fraud include the landlord-tenant relationship. Under these laws it is a fraud for a landlord to rent premises in defective condition. The statutes often provide for punitive damages and for the landlord to pay the tenant's attorney's fees.

**Sidebar: SHOULD YOU GO TO COURT?**

If the state courts are responsive to municipalities' lawsuits for code enforcement, they will be responsive to tenants' lawsuits as well. In those cases, suing will be quite effective.

The major problem is that the complexity of the court system really requires tenants to be represented by an attorney. Poor tenants may have access to free or low-cost legal services, but most tenants are not eligible for such assistance. Middle- income tenants will have to find an attorney willing to represent them on a contingency fee basis (that is, paid upon winning the case). Thus, suing the landlord is not easy. However, some lawsuits in California have resulted in judgments against landlords for millions of dollars, including paying the fees of the tenants' attorneys.

On the other hand, if the courts have not become responsive to municipal code enforcement, then the tenants will not do well in court. The ability to sue successfully, particularly under the consumer fraud law, depends upon the sensitivity of the courts.

**Repair and deduct**

**Q. What is repair and deduct?**

**A.** Repair and deduct is a law that permits the tenant to hire someone to make essential repairs and then to deduct the cost from the rent. In many places, state or local law covers only repairs that are required to keep the premises habitable, such as repair of a broken furnace or leaking roof.

**Q. How does a tenant use repair and deduct?**

**A.** The tenant would serve a written notice on the landlord. This notice would list specifically what repairs the tenant needs, provide a period of time for the landlord to comply, and state that if the landlord fails to do so, the tenant will hire someone to make the repairs and will deduct that cost from the rent.

**Q. Are there any limitations on the use of repair and deduct?**

**A.** Local laws may place a maximum dollar amount that the tenant can spend on repairs. For example, a Chicago ordinance limits a tenant's repairs to five hundred dollars. Some laws limit repair costs to one month's rent.

However, in jurisdictions that have no explicit repair and deduct legislation and rely on the implied warranty of habitability, the right to use repair and deduct is limited only by the reasonableness of the repairs. A tenant may even be able to buy a new furnace and deduct the cost from the rent.

### **Reduced Rent**

#### **Q. What is reduced rent?**

**A.** When the premises do not comply with the standards of the local housing code, the tenant can pay the landlord a rent reduced from the full contract amount, which reflects the reduced value of the premises.

#### **Q. How does a tenant go about paying reduced rent?**

**A.** The tenant would serve a written notice on the landlord. This notice would list specifically what repairs the tenant needs, provide a period of time for the landlord to comply, and state that the tenant will pay a reduced rent unless the landlord makes the repairs within the time specified.

#### **Q. May the tenant withhold all the rent?**

**A.** A tenant might do that, especially to get the landlord's attention. But the landlord could reply with a notice to pay up or get out. And if the premises remained habitable at least to some extent, some rent would be owed. It would be up to a court to decide how much of a reduction is justified.

#### **Q. Must the tenant put the withheld rent money in an escrow account?**

**A.** There is no legal requirement to do that. But it might be a good idea, so that the money would be readily available if needed. Some local landlord-tenant ordinances might require that the rent money be placed in escrow in the event of litigation. When a case goes to court, the judge is likely to ask if the disputed money is available.

#### **Q. What is a rent strike?**

**A.** Some localities allow tenants to withhold all of the rent money in a dispute about repairs. Provided they have the money to pay the landlord back for any rent which the court finds to be owed, they will not be evicted. A rent strike is usually a collective action by a number of the tenants in the same building. They may withhold all of the rent or perhaps only a portion. It is a good idea to place the rent money in escrow in a rent strike so that all tenants know that their neighbors are participating; this also protects the money and limits each individual tenant's liability.

#### **Q. How do the courts calculate rent reductions?**

**A.** There are several standards, but they are not consistent across the country. Some courts have permitted reductions based on the fair market rental value of the premises. This means that the rent is reduced from the contract amount to the value the court considers fair with the defects. Other courts have adopted a proportional use standard. This means the reduction is determined by how much the defects reduce the use of the premises. If the use is reduced by 40 percent, for example, the rent may be reduced by 40 percent.

**Q. If the tenant paid full rent but the premises were defective, can the tenant seek a rent reduction for past months?**

**A.** Maybe, but the tenant would have to sue the landlord to collect. This concept is called retroactive rent abatement.

Both the implied warranty of habitability and local ordinances provide that the tenant has the right to recover damages from the landlord for failure to maintain the premises.

For example, suppose that the lease called for rent of \$500 a month and the tenant paid that amount for six months, \$3,000 in all. And suppose that the court later determines that the value of the premises was only \$300 a month, \$1,800 in all. The court could order the landlord to refund the \$1,200 overpayment to the tenant.

**Lease Termination for Code Violations**

**Q. Can the tenant terminate the lease if the landlord fails to maintain the premises?**

**A.** Yes. Three different legal theories justify such an action. They are called illegal lease, constructive eviction, and material noncompliance.

**Q. What is an illegal lease?**

**A.** If the landlord has been cited by the municipality for serious violations of the housing code, the tenant can argue that the lease is illegal because the code makes it against the law for the landlord to rent the premises in defective condition. This theory holds that the landlord should not benefit economically from the illegal act.

**Q. What is constructive eviction?**

**A.** Constructive eviction means the property is in such poor condition that the tenant really cannot live there. For example, there is no water, no electricity, no heat, or there is a seriously leaking roof in danger of collapse.

The tenant has to serve notice on the landlord of the conditions but there is usually not a minimum time period before the tenant can vacate. The tenant must actually move out in order to argue constructive eviction. If constructive eviction applies, the tenant will not be responsible for paying the rent.

**Q. What is material noncompliance?**

**A.** Material (that is, substantial) noncompliance means the premises don't meet the minimum standards of the local or state housing code. The concept is similar to the standard of the implied warranty of habitability invented by the Uniform Residential Landlord and Tenant Ordinance ([see page 21 of this chapter](#)).

To terminate the lease on these grounds, the tenant would have to serve written notice on the landlord, specify the conditions that represent material noncompliance, demand the correction of the conditions within a specified period of time, and inform the landlord of the date that the lease will terminate if the conditions are not corrected.

**Other Lease Termination by Landlords**

**Q. Does the landlord need a reason to terminate the lease at the expiration of the term?**

**A.** The landlord does not need a reason to terminate the lease unless the lease requires a written notice or provides for automatic renewal. However, the nonrenewal of the lease may be governed by a security of tenure law or a retaliatory conduct law, which are discussed below in this section.

**Q. How does the landlord terminate the lease at the expiration of the term?**

**A.** It depends upon the type of lease.

If there is an oral lease with month-to-month tenancy, the landlord ends it by serving a written notice of the same length. For example, the notice must give the tenant thirty days to vacate if rent is paid monthly, and seven days if it is paid weekly, although some states have different rules. Most cities or states require that this notice be delivered personally to the tenant, although some permit delivery by mail.

If there is a written lease with a specific duration or term, the lease automatically ends on the last day of the term. However, some municipal ordinances require a 30-day written notice to the tenant before the end of the term. Without such a notice the tenant does not know whether the landlord wants to renew the lease or not. It is always a good idea for the landlord and tenant to discuss the matter well before the term ends.

**Sidebar: FORCING A TENANT OUT**

A landlord can terminate the lease and force the tenant out for good cause. The most common causes are nonpayment of rent, damage to the premises, and violation of the rules and regulations of the lease. The most common violations are disturbing the neighboring tenants with noise, possession of pets, and occupancy by persons who are not named on the lease. Often the landlord must give the tenant a short period in which to correct the problem before eviction action begins.

**Q. Can the landlord terminate the lease because the tenant is paying reduced rent?**

**A.** If the tenant is paying reduced rent because of the landlord's breach of the implied warranty of habitability or violation of the housing code, the landlord may not have the right to terminate the lease. A retaliatory conduct law may prohibit such a termination.

**Q. What kinds of actions by the tenant are protected from landlord retaliation?**

**A.** The landlord may not retaliate if the tenant exercises any right or remedy under the law. These rights include complaining to the government agency responsible for code enforcement, complaining to the landlord about code violations and the failure to make repairs, and organizing or joining a tenants union.

**Q. What kinds of conduct by the landlord does the law consider retaliatory?**

**A.** Landlord-tenant laws define four actions as retaliatory: eviction action or the threat of it, nonrenewal of the lease, increasing the rent, and decreasing the services.

**Q. How does the tenant prove that the landlord's conduct was retaliatory?**

**A.** The tenant does not have to prove it. The law assumes that the conduct was retaliatory if it followed the tenant's protected actions within a specified period of time, sometimes as



long as six months. The landlord has the burden to prove some other valid motive in terminating the lease. The tenant can further assure legal protection by keeping a log of events and communications pertaining to the landlord's conduct.

**Q. How does the landlord terminate the lease for cause?**

**A.** For nonpayment of rent the landlord can serve a written notice threatening to terminate the lease unless the tenant pays the past due rent within a certain number of days (depending upon the area, from three to ten days). If the rent is paid, the tenant may remain.

For violation of the rules and regulations of the lease or damage to the premises, the landlord can serve a written notice terminating the tenancy after a certain number of days (from ten to thirty days, depending upon the area). Some localities, but not all, provide that the tenant may remain if the violation ends, for example, getting rid of a forbidden pet or repairing the damage to the premises.

**Q. What does all this emphasis on written notices mean to the landlord?**

**A.** In every jurisdiction the law imposes specific statutory obligations on the landlord as to the method of termination of leases. If the landlord fails to give the written notice where required or if the notice is not properly written or not properly served on the tenant, the landlord will not have the right to terminate the tenancy. When the landlord goes to court, it is already too late to correct any deficiencies in the written notice.

Besides hiring an attorney to advise on the entire procedure, the landlord can get standardized termination forms from stationery stores, the local apartment association, or the Board of Realtors. Landlords should use these forms and fill in every blank space accurately to be sure that they follow the law.

**Q. What can the landlord do if the tenant doesn't move after the lease is terminated?**

**A.** The landlord has to take the tenant to eviction court. The landlord cannot evict the tenant; only a court can do that.

**Sidebar: CHANGING THE LOCKS**

Most people have heard stories of landlords changing the locks or shutting off the water or electricity to force a tenant out. That sort of thing is illegal.

In fact, some jurisdictions consider such action a criminal offense. Unless the tenant is allowed back in, the landlord could be arrested. The law might also provide a process by which the tenant could sue the landlord for monetary damages and attorney's fees for an unlawful interruption of the occupancy.

**Q. How long does the eviction process take?**

**A.** After the notice period expires, the landlord may file a lawsuit alleging forcible entry and unlawful detainer. The court will assign the case for trial as a "summary" or quick proceeding. Assuming proper service of the summons and complaint on the tenant, the court will render judgment after a default proceeding or trial. The trial may be scheduled as soon as two weeks after the suit is filed. In some states, the judge can order eviction immediately at the end of the trial.

But customarily the court gives the tenant time to move out, usually one to four weeks. If the tenant remains after that period, the landlord has to hire the sheriff or marshal to carry out a forcible eviction. That will take several weeks more. Further delays are possible if the tenant files a motion for more time or objects to the court determination.

Thus, the eviction process from the end of the notice period can take from five weeks to three months. And that assumes there are no delays.

**Q. What can delay the judgment?**

**A.** Many things. First, the landlord must hire the sheriff, a licensed process server or an attorney to serve the summons and the complaint on the tenant. If that agent is unable to serve the papers properly, the trial cannot go forward on the scheduled date and the landlord has to try again. In some jurisdictions the landlord's agent may "nail and mail" the summons and complaint (that is, post the papers on the tenant's front door and then mail copies to the tenant). In some other areas the landlord has to employ an agent to serve the papers the first time but may "nail and mail" the second time.

The trial may be delayed by procedural matters, such as problems with the landlord's termination notice or problems with the method of service of that notice or of the court summons and complaint. Or the tenant may request certain procedural rights, such as pretrial investigation of the facts or a jury trial.

Action may also be delayed if the tenant has substantive defenses against the eviction, such as the landlord's violation of the implied warranty of habitability, discrimination, or retaliation.

**Q. What happens if the tenant does not show up in court?**

**A.** If the tenant does not respond properly to the lawsuit or show up in court, the judge will issue a default judgment in favor of the landlord. This is what happens in most eviction suits. It is obviously not in the tenant's interest to fail to appear.

**Q. What kind of judgment may the court enter in an eviction case?**

**A.** If the court rules in favor of the landlord, it may require the tenant simply to vacate the premises or to vacate and pay back rent, damages, court costs, and, in a few places, the landlord's attorney's fees.

**Q. Can the landlord take the tenant's possessions or physically throw the tenant out after the court allows eviction?**

**A.** No. The landlord must have the sheriff or other proper authority carry out the physical eviction. Only the court can evict a tenant, and the purpose of the court proceedings is to prevent the landlord from "self-help" evictions. If the court issues a judgment for unpaid rent, the landlord must use the normal debt-collection procedures, which may include partial wage garnishment and attachment of bank accounts.

**Q. Is any of the tenant's property protected from seizure?**

**A.** Yes. All jurisdictions exempt some property from seizure by creditors, but they vary greatly in specifying which property is exempt. States may exempt used cars of low value, household furnishings, clothing, tools or equipment used in the tenant's business, and most of the tenant's wages.

**Q. Does the tenant owe rent after the termination of the lease and being evicted?**

**A.** The landlord and the court may terminate the right of the tenant to occupy the premises. However, in many areas the tenant can still be held liable for the payment of rent if the lease provides for it. But it is unusual for the landlord to sue the tenant a second time if the reason for the first lawsuit was nonpayment of rent.

**Other Leases Termination by Tenants**

**Q. If the tenant moves out before the expiration of the lease, is the lease terminated?**

**A.** No. The lease does not terminate just because the tenant moves out. The lease is a contract in which the tenant promises to pay the landlord for the right to possess the premises whether the tenant actually lives there or not.

**Q. How can the tenant terminate the legal obligation of the lease?**

**A.** There are three ways for the tenant to get out of the rental obligation: termination for legal misconduct by the landlord, replacement in the premises by a new tenant, or agreement between the landlord and tenant.

Failure to maintain the premises may constitute legal misconduct. Local laws may provide for termination of the lease if the landlord violates other provisions of the law, such as by abusing access to the premises or failing to disclose code violations cited by the municipality.

If another tenant replaces the existing tenant, the first tenant can avoid the rental obligation. The landlord cannot legally collect from the original tenant if the replacement tenant pays the full rent.

Obviously, the landlord and tenant can end the tenancy by mutual agreement. This simple approach is often overlooked.

**Q. How is one tenant replaced by another?**

**A.** Under the common law, if there is no written lease, the tenant has the unrestricted right to transfer the leasehold to anyone else. A written lease will undoubtedly contain a provision giving the landlord the right of approval over prospective replacement tenants. Whether the landlord is acting reasonably in approving or disapproving of the replacement tenant can be an issue.

**Q. Does the landlord have the duty to mitigate the rental obligation of the tenant who moves out?**

**A.** In many places, the landlord is obligated to make a good-faith effort to find a new tenant promptly so that the old tenant can discontinue paying rent. The first tenant can also help find a new tenant.

**Q. What is the difference between subleasing and reletting?**

**A.** In reletting, the landlord signs a completely new lease with the replacement tenant and releases the original tenant from the obligation to pay rent.

In subleasing, the first tenant rents to another one. Although the subtenant now has the obligation to pay rent, the original one still remains responsible for the remainder of

the lease term. Therefore, if the subtenant fails to pay, the landlord may sue the original tenant for the rent even though that tenant is no longer using the premises.

The original tenant may also be liable for damages if the subtenant breaches the lease or destroys the property.

**Q. Can the tenant stay after the expiration of the lease?**

**A.** A tenant who stays after the expiration of the lease is called a tenant at sufferance. The landlord can sue for eviction or can choose to continue accepting rent, thus renewing the lease. The renewal will be on a month-to-month basis or for another year, depending on the terms of the lease and the provisions of the law. Moreover, a provision of the lease or a statute may give the landlord the right to charge double the current rent during the withholding period.

Since the landlord has the choice of eviction or renewal, the tenant who needs to stay past the expiration of the lease should try to negotiate an agreement with the landlord and should get it in writing.

**SECURITY DEPOSITS**

**Q. What is a security deposit?**

**A.** It is money to protect the landlord in case the tenant damages the property or fails to pay rent. Usually the tenant pays the security deposit before moving in. The landlord may ask for any amount, but some local laws restrict the deposit to the equivalent of one or two months' rent.

**Q. What does the lease say about security deposits?**

**A.** A preprinted standard lease form will probably contain a paragraph explaining that the tenant has made the deposit to assure compliance with all the terms of the lease. The lease will also set forth the conditions under which the landlord will return the deposit to the tenant. Most leases allow the landlord to keep all or part of the deposit if the tenant owes rent upon moving out or has caused property damage beyond normal wear and tear. Some of it may also be kept to pay for cleaning the premises for the next tenant.

**Q. Are deposits for cleaning, pets, parking, or garage door openers considered security deposits and, thus, refundable?**

**A.** Yes. If the tenant performs the duties set forth in the lease, the landlord does not have a legal reason to keep the money whether the lease calls it a security deposit or not.

**Q. Must landlords hold security deposits in a separate bank account apart from other assets?**

**A.** Not unless the law imposes such a requirement. But if there is such a requirement, a landlord who fails to keep the security deposit separate from other money may owe damages to the tenant.

**Sidebar: INTEREST ON DEPOSITS**

Most states have statutes requiring the landlord to pay interest on the security deposit. In those states, the landlord cannot avoid paying interest simply because a lease says the deposit does not earn interest.

Some landlords try to get around this by calling the security deposit "prepaid rent." But some laws say prepaid rent earns interest as well.

After the passage of the local landlord-tenant ordinance in Chicago requiring the payment of interest on security deposits, a number of landlords converted the deposits to prepaid rent for the last month of the lease. So the City Council amended the ordinance to require the payment of interest on prepaid rent.

**Q. Under what conditions does the landlord owe a refund of the security deposit?**

**A.** The landlord will owe the tenant at least a partial refund if the rent was paid in full and the cost of repairs beyond normal wear and tear.

**Q.** What should the tenant do if the landlord does not refund the deposit or refunds what the tenant believes is too little?

**A.** The tenant should first try to negotiate with the landlord, perhaps with the help of a mediator. If that fails, the tenant should take the landlord to small claims court. Many states have a special small claims court where persons can sue to collect money owed to them without the need to hire an attorney. These courts are sometimes called pro se courts (Latin for "for oneself") because the tenant, who will be the plaintiff in the lawsuit, is often required to appear without a lawyer. (In most places, the landlord may still hire an attorney.) This type of court is not as intimidating as regular court because the judge does not expect legal sophistication from the tenant.

**UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT**

In response to the civil rights movement of the 1960s, the federal government funded a legal services project to draft a model residential landlord-tenant code. From this model code the National Conference of Commissioners on Uniform State Laws drafted the Uniform Residential Landlord and Tenant Act (URLTA) in 1972. The American Bar Association approved this act in 1974. Subsequently, most states and many municipalities passed laws based upon this act.

**Q. Does the URLTA favor tenants over landlords?**

**A.** No. URLTA provides for both landlord and tenant obligations and remedies.

**Q. Are there tenants' rights not covered in URLTA?**

**A.** Yes. URLTA does not provide for security of tenure; control over rent increases; payment of reduced rent for reduced services; freedom of speech in relationship with a landlord; appointment of a receiver to manage the building if the landlord fails to do so; payment of interest on the security deposit; separate handling of the deposit and the rent money; or condominium conversion protection for tenants.

**Q. What is security of tenure?**

**A.** Security of tenure provides that the tenant has the legal right to continue the tenancy indefinitely unless the tenant violates certain rules or regulations or the landlord has a compelling reason to reclaim possession of the premises. This provision is a major departure from the traditional concept that the landlord had the arbitrary right to terminate the lease at the end of any term. The right of the landlord to raise rent is the major area of conflict in the enforcement of security of tenure. All municipalities with rent control have security of tenure laws. New Jersey has the only statewide security of tenure law.

**Sidebar: Vote for . . .**

A landlord may be able to force you to remove a political sign from your window.

The First Amendment to the Constitution provides that the government may not abridge any citizen's right to freedom of speech, and that means political expression of any kind. But the amendment does not cover private relations, such as between a landlord and tenant. It is common for a lease to contain a clause that forbids the tenant to exhibit any sign, political or otherwise, in the window or elsewhere in the apartment without the approval of the landlord.

**Q. What is condominium conversion protection for tenants?**

**A.** During the late 1970s thousands of rental buildings were converted to condominium ownership by real estate developers. The tenants had to buy the apartments if they wanted to stay in the buildings. This was financially impossible for many tenants, and they had to move out.

Protests by tenants led to the passage of laws in many communities controlling the method of the conversion and in some cases even the right of developers to convert buildings at all. These laws' most common restriction required the developer to bring the building fully up to the standard of the local housing code. The restriction most desired by tenants was the requirement that a certain percentage of the existing tenants had to buy in order for the conversion to go forward. Sometimes the existing tenants who did not buy had the right to continue to rent in the building even if the conversion occurred. In no area, however, has legislation stopped conversions entirely.

**Rent Control**

**Q. What is rent control?**

**A.** The words "rent control" apply to laws or governmental regulations that limit the amount of rent or rental increase that the landlords can charge.

**Q. Has there ever been nationwide rent control in the United States?**

**A.** Nationwide rent controls existed during World War II. President Nixon also imposed rent controls in 1971 during the initial phase of the effort to control inflation.

All public housing has rent control by definition, because the government sets the rent level for each tenant. Privately owned rental housing in which the government gives some special subsidy to the developer or landlord has rent control because the landlord must secure the approval of the government before raising rents. Most privately owned rental housing is subject to rent control only if the local or state government has passed a rent control ordinance or statute.

**Q. What areas of the country have rent control?**

**A.** The District of Columbia and some municipalities in Massachusetts, New York, New Jersey, and California have passed rent control ordinances. Some state legislatures have outlawed local rent control ordinances. Perhaps 10 percent of the tenants in the country are covered by some form of rent control.

**Q. What kinds of rent control laws are there?**

**A.** New York City was the only municipality in the country to retain rent control after the end of World War II. The law there did not permit rent increases without specific permission from an administrative board. Rents could be raised based upon a pass-through of certain expense increases, such as the cost of fuel.

From the late 1960s through 1978 other communities adopted rent control. Most of these laws allow automatic but limited rent increases without any requirement of showing expense increases. Landlords are allowed to petition for larger increases on the basis of major repairs or extraordinarily large expenses that the normal rent increase would not cover. These so-called second-generation rent control laws have prevented some of the large rent increases experienced by tenants in other cities.

**Q. How does rent control regulate the amount of rent?**

**A.** Usually the mayor of the city with rent control appoints a board to administer the law. That board determines how much the annual rent increases will be and whether individual landlords get extra rent increases. Some communities elect the rent control board members directly. Some observers think the elected boards are more independent from landlords.

**Sidebar: Ability to pay**

Rent control does not consider a tenant's ability to pay. It is not a social welfare program providing subsidies to the tenant. Even in communities with rent control, there are tenants spending too large a percentage of their incomes on rent. Rent control does not make housing affordable for everyone.

**Q. Are there state laws against rent control?**

**A.** Yes. Legislatures in about half of the states have forbidden municipalities to enact rent control ordinances. For example, in 1987, after the voters of Detroit enacted rent control by referendum, the Michigan Legislature passed a law revoking the right of cities to adopt rent control laws.

**Q. What is vacancy decontrol?**

**A.** Vacancy decontrol is a provision of a rent control law that allows landlords to charge whatever rent they can collect from a new tenant who moves in to fill a vacancy. This is really an anti-rent-control provision. Within a few years, new tenants in the same building can be paying twice as much as old tenants. Not only does the landlord collect more rent with vacancy decontrol, but public support for rent control is undermined by the unfairness of treatment.

## **FAIR HOUSING**

### **Q. Is a landlord allowed to discriminate in the selection of tenants?**

**A.** Yes. The landlord can use legal criteria to select tenants, such as their past history of tenancy, the amount of income they have with which to pay the rent, their credit history, and their past criminal record. The landlord may also use personal criteria in selecting tenants, such as purple hair or nose rings. In some places, a landlord may even refuse to rent to certain people because of their occupation.

### **Q. What is fair housing?**

**A.** "Fair housing" is a legal term applied to federal, state, and municipal laws that prohibit landlords from refusing to rent property because the prospective tenant falls into one or more certain protected classes.

The Fair Housing Act (Chapter 42 of the United States Code, beginning at Section 3601) forbids landlords to discriminate in choosing tenants because of their race, religion, ethnic origin, color, sex, physical or mental handicap, or family status. Landlords cannot refuse to rent to a family with children. It is also illegal under the Fair Housing Act for landlords to harass, intimidate, threaten, interfere with, or evict a tenant because of the same factors. Furthermore, the same law prohibits the landlord from attempting to evict a tenant for filing a complaint or lawsuit charging the landlord with discrimination.

The Civil Rights Act of 1866 (Chapter 42 of the U.S. Code, Section 1982) prohibits discrimination because of the race, ethnic origin, or color of the tenants. This federal law applies to all landlords without any exceptions.

All the states and many cities have enacted fair housing laws as well. Some of these laws are not as strict as the federal law, but some are stricter because they protect additional classes of persons.

Some states and municipalities forbid rental discrimination based on marital status, age (over 40 especially), less than honorable discharge from the military, sexual orientation, or source of income (welfare, social security, alimony, or child support).

### **Q. What can a prospective tenant do against a landlord who discriminates illegally?**

**A.** The fair housing laws provide for two remedies. A prospective tenant can file an administrative complaint with the agency enforcing the law or can sue the landlord in court.

The U.S. Department of Housing and Urban Development (HUD) is responsible for enforcing the federal fair housing laws. The complaint must be filed within one year of the date of the discriminatory conduct. States and many cities have human rights agencies that accept complaints. HUD has the authority to award monetary damages to the person discriminated against; the agency of the state or municipality may have similar authority.

The prospective tenant may also file a lawsuit in federal court to enforce the Fair Housing Act or the Civil Rights Act. The person may file an administrative complaint with HUD and sue in court at the same time. The prospective tenant may file a lawsuit in the state court to enforce the state or local law.

### **Q. How can the prospective tenant prove that the landlord has illegally discriminated?**



A. The prospective tenant has the burden of proving that the landlord's conduct was discriminatory. The person can establish a case against the landlord by proving four things: that the plaintiff is a member of a protected group; that the plaintiff applied for and was qualified to rent a certain property; that the plaintiff was rejected by the landlord; and that the property remained unrented thereafter.

**Q. What are the possible outcomes for a prospective tenant who files a complaint or a lawsuit for discrimination?**

A. If the prospective tenant wins, the landlord can be ordered to rent the premises and perhaps to pay actual and punitive monetary damages as well. The landlord can also be assessed the attorney's fees incurred by the prospective tenant. The landlord may also have to submit to periodic review of documents and practices for a certain number of years.

**WHERE TO GET MORE INFORMATION**

A good source of information, with many links, is provided on the site of Cornell Law School's Legal Information Institute,

[http://wwwsecure.law.cornell.edu/topics/landlord\\_tenant.html](http://wwwsecure.law.cornell.edu/topics/landlord_tenant.html) Another good site, from the tenant's perspective, is Know Your Rental Rights, <http://little.nhlink.net/nhlink/housing/cto/know/kyrr.htm>

Many states and cities have departments of housing, departments of fair housing, or departments of human affairs. Employees there can usually answer questions and accept complaints of discrimination. Municipal housing departments can also receive complaints of inadequate maintenance. Check government listings in the local telephone directory.

The U.S. Department of Housing and Urban Development (HUD) has offices in many large cities and has involvement in many landlord-tenant issues. HUD has regulations governing public housing, publicly subsidized housing, and fair housing. HUD can answer questions and accept complaints of housing discrimination. Website:

<http://www.hud.gov/>

Tenants may seek the assistance of the National Housing Institute, which provides information and referral to local tenant organizations. NHI is located at 439 Main Street, Orange, NJ 07050. Telephone 973-678-9060; 973-678-8437 (fax). Website:.

<http://www.nhi.org/> .

Landlords may seek the assistance of local real estate or building management organizations. A good website, [www.landlord.com](http://www.landlord.com) provides legal information and much more.

Bar associations may provide referral to local attorneys who are familiar with landlord-tenant law or fair housing law in the community.

Information on local housing codes is available from the local code enforcement department.

There are three national or regional organizations that write model-housing codes. They typically provide written materials to both the public and professionals.

American Public Health Association

800 I St. N.W.

Washington, DC 20001-3710  
202.777.APHA; fax: 202.777.2534  
Website: <http://www.apha.org/>

Building Official and Code Administrators International

4051 West Flossmoor Road  
Country Club Hills, IL 60478  
Telephone 1-800-214-4321  
Website: <http://www.bocai.org/>

Southern Building Code Congress International

900 Montclair Road  
Birmingham, AL 35213-1206  
Telephone (205) 591-1853  
Website: <http://www.bocai.org>

Two national publications discuss landlord-tenant law in layperson's terms:

*Landlord Tenant Law Bulletin*

Quinlan Publishing Company  
23 Drydock Avenue  
Boston, MA 02210-2387  
Telephone (617) 542-0048  
Website: <http://www.landlord-tenant-online.com/LT.html>  
Website (main): <http://www.quinlan.com/>

*Managing Housing Letter*

CD Publications  
8204 Fenton Street  
Silver Spring, MD 20910  
Telephone (301) 588-6380  
Website (main): <http://www.cdpublications.com/index.htm>  
Website <http://www.cdpublications.com/housing/mhl.htm>

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